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PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Carl J. Kissell et al. Confirmation No. 5999
Serial No.: 10/670,886 Art Unit: 3724
Filed: September 25, 2003 Examiner: Nguyen, Phong H.
For: Frangible Fiberglass Insulation Batts

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Below is an appeal brief in support of an appeal taken from the final rejection of claims 1-2, 17 and 20, mailed August 8, 2005. The appeal brief fee (\$500), a notice of appeal and the notice of appeal fee (\$500) all accompany this appeal brief.

1. Real party in interest. All rights in this application have been assigned to Knauf Fiber Glass GmbH, a corporation existing under the laws of the country of Germany.
2. Related appeals and interferences. Appellants and undersigned counsel for appellants know of no appeals or interferences related to the present application on appeal.
3. Status of Claims. The application contains Claims 1-17 and 20-22. Claims 18-19 and 23-26 are cancelled. Claims 1, 2, 17 and 20 are reproduced in the attached Appendix A of claims. Claims 1 and 2 have been rejected under 35 U.S.C. §112, second paragraph. Claims 1, 17 and 20 have been rejected under 35 U.S.C. §102(e) as anticipated by Weinstein et al. (U.S. Patent No. 6,670,011). Claims 3-16 and 21 are allowed.
4. Status of Amendments. Appellants' after final amendment filed August 25, 2005 has been refused entry as stated in the advisory action mailed September 6, 2005.

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5. Summary of the Invention.

The present invention is directed to a method for producing a fiberglass insulation batt 10 (Fig. 1) formed to include longitudinally extending frangible planes 12, 14 therein to enable construction workers to convert the fiberglass insulation batt into separate fiberglass insulation strips 21, 22, 23 (Fig. 2) of various predetermined widths in the field without the use of cutting tools. A "batt" is a blanket of thermal insulation usually comprising glass fibers.

Fiberglass insulation blanket 40 is passed through interval cutter 42 to cut blanket 40 along a cut line 12 to form two side-by-side strips 21, 22 separated by a first series of intermittent gaps 39 to form a frangible plane 12 extending along cut line 12. Interval cutter 32 also cuts blanket 40 along cut lines 14 and 16 to provide (1) a second series of intermittent gaps 39 separating side-by-side strips 22, 23 to form a frangible plane 14 extending along cut line 14 and (2) a third series of intermittent gaps 39 separating side-by-side strips 23, 24 to form a frangible plane 16 extending along cut line 16.

As suggested in FIGS. 5-8, interval cutter 42 includes a fluid-reservoir tray 54, a fluid discharger 56, a fluid blocker 58, and a blocker mover 60. Blocker mover 60 is an oscillator and operates to move fluid blocker 58 back and forth above fluid-reservoir tray 54 to cause high-pressure fluid 62 emitted from fluid discharger 56 to form a series of intermittent gaps 39 in the fiberglass insulation blanket 40 moving on conveyor 50 under interval cutter 42.

6. Issues on appeal. Whether Claims 1 and 2 are indefinite under 35 U.S.C. §112, second paragraph. Whether claims 1, 17 and 20 are anticipated under 35 U.S.C. §102(e) by Weinstein et al.

7. Grouping of Claims. Each of Claims 1, 2, 17 and 20 stand or fall separately.

8. Copy of the Claims. A copy of the claims on appeal is attached to this brief as an Appendix.

9. Argument.

The 35 U.S.C. §112, Second Paragraph Rejection of Claims 1-2.

The final office action rejects claims 1-2 as being indefinite. At page 2 of the office action it is stated that

the last three lines of claim 1 recite the fluid reservoir-tray 54 for blocking the flow of high-pressure fluid. It appears that the fluid reservoir-tray is for conducting spent water and the fluid-blocker 58 is for blocking the flow of high-pressure fluid. Since it is unclear whether the Applicant intends to claim the fluid-reservoir-tray or the fluid blocker, the newly added limitation of the fluid reservoir-tray will not be considered in claim 1.

A decision as to claim indefiniteness requires a determination of whether those skilled in the art would understand what is claimed.¹ Claims are considered to satisfy the requirements in the second paragraph of 112 if they define the metes and bounds of the claimed subject matter with a reasonable degree of precision and particularity.²

The rejection asserts that “it is unclear whether the Applicant intends to claim the fluid-reservoir-tray or the fluid blocker....” Appellants’ claim 1 is directed to a method of producing a frangible fiberglass insulation batt comprising the acts (steps) of

passing a fiberglass insulation blanket through an interval cutter..., wherein the act of passing comprises the acts of discharging a flow of high-pressure fluid to intercept and penetrate the fiberglass insulation blanket along the cut line to form a gap in the fiberglass insulation blanket as the fiberglass insulation blanket is passed through the interval cutter and interrupting the flow of high-pressure fluid intermittently as the fiberglass insulation blanket is passed through the interval cutter to divert the flow of high-pressure fluid from intercepting and penetrating the fiberglass insulation blank intermittently to establish the series of intermittent gaps in the fiberglass insulation blanket and cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray located above the insulation blanket to block the flow of high-pressure fluid.” (Emphasis Added).

The steps in claim 1 include “passing a fiberglass insulation blanket through an interval cutter..., discharging a flow of high-pressure fluid..., interrupting the flow of high-pressure fluid intermittently... to divert the flow ..., and cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray....” Claim 2 further requires “moving a fluid blocker comprising a plate located above the fluid-reservoir tray....”

¹ See *Amgen Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1217, 18 USPQ2d 1016, 1030 (Fed. Cir. 1991).

² See *In re Venezia*, 530 F.2d 956, 958, 189 USPQ 149, 151 (CCPA 1976) and *In re Hammack*, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970).

Appellants' claims are directed to a method, not an apparatus. Whether "Applicant intends to claim the fluid-reservoir-tray or the fluid blocker" is not relevant to the present method. The steps in the method are clear. The steps clearly involve a step to "cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray..." and a step of "moving a fluid blocker comprising a plate located above the fluid-reservoir tray...." One of ordinary skill in the art would understand these steps and be able to practice them. The metes and bounds of the claimed subject matter are described with a reasonable degree of precision and particularity as evidenced by the above underlined phrases which are steps in the method. This is all that is required. The office action does not indicate that any step is indefinite and there is no statement in the rejection of why any step(s) is indefinite. The statement that "it is unclear whether the Applicant intends to claim the fluid-reservoir-tray or the fluid blocker...." is the only statement pointing to an alleged indefiniteness and this statement is not, for the above-noted reasons, a proper basis for indefiniteness.

Reversal of the rejection is requested.

The 35 U.S.C. §102(e) Rejection of Claims 1, 17 and 20 over Weinstein et al.

Anticipation under 35 U.S.C. 102 is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention.³

Weinstein et al. at, for example, column 16, lines 14-36, discloses cutting a fibrous blanket 20 with water jets 510 or a series of rotating compression slitters or cutters 520 (FIG. 18). The water jets 510 are activated or fired periodically to send jets of water through each fibrous insulation blanket 20 and form one or more spaced apart longitudinally extending perforated lines of alternating cuts 34 and separable connectors 36 in each fibrous insulation blanket 20, such as the perforated lines 38, 40 and 42 shown in FIG. 16. When used, the portions 522 of the rotating compression slitters 520 intermediate the notches 524 in the periphery of the circular cutting edges of the rotating compression slitter form the cuts 34 in the blanket while the notches 524 form the separable connectors 36 in the blanket as the blanket passes between the rotating cutter and a backing plate 526. The spacing between the notches 524 determines the

³ See RCA Corp. V. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

notches 524 form the separable connectors 36 in the blanket as the blanket passes between the rotating cutter and a backing plate 526. The spacing between the notches 524 determines the lengths of the cuts 34 and the widths of the notches 524 determines the lengths of the connectors 36.

Claim 1

The final office action states, with respect to claim 1, that Weinstein teaches a method for producing a frangible fiberglass insulation batt comprising the step of passing a fiberglass insulation blanket through an interval fluid cutter to form intermittent gaps.

As noted above with respect to the indefiniteness rejection, appellants' claim 1 is directed to steps including passing a fiberglass insulation blanket through an interval cutter..., discharging a flow of high-pressure fluid..., interrupting the flow of high-pressure fluid intermittently... to divert the flow ..., and cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray....

Weinstein does not disclose "interrupting the flow of high-pressure fluid intermittently... to divert the flow" as recited in claim 1 and does not disclose interrupting to "cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray."

For at least these reasons, the rejection of claim 1 is improper and should be reversed.

Claim 17

The final office action states, with respect to claim 17, that "Weinstein teaches a method for producing a frangible fiberglass insulation batt comprising the step of passing a fiberglass insulation blanket through an interval fluid cutter to form intermittent gaps and passing the two side-by-side strips through a curing oven to form (sic) a frangible bridge spanning each of the series of intermittent gaps. See col. 16, line 14-col. 18, line 25 and Figs. 16-18."

Appellants' claim 17 requires

passing a fiberglass insulation blanket through an interval cutter to cut the fiberglass insulation blanket along a cut line to form two side-by-side strips separated by a series of intermittent gaps to form a frangible plane extending along the cut line, wherein the act of passing comprises the acts of discharging a flow of high-

interval cutter and interrupting the flow of high-pressure fluid intermittently as the fiberglass insulation blanket is passed through the interval cutter to divert the flow of high-pressure fluid from intercepting and penetrating the fiberglass insulation blank intermittently to establish the series of intermittent gaps in the fiberglass insulation blanket, and further comprising the act of then passing the two side-by-side strips through a curing oven to expose the strips to a predetermined fiberglass curing heat extant in the curing oven to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the series of intermittent gaps in the fiberglass insulation blanket.

Weinstein does not disclose "interrupting the flow of high-pressure fluid intermittently... to divert the flow" as recited in claim 17. In Weinstein the flow is stopped (see column 16, lines 22-27), it is not diverted. Weinstein does not disclose the step of "then passing the two side-by-side strips through a curing oven... to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the series of intermittent gaps...."

Weinstein at column 5, lines 29-37 teaches

[t]he fibers in the unfaced and faced pre-cut fibrous insulation blankets of the present invention may be bonded together for increased integrity, e.g. by a binder at their points of intersection such as but not limited to urea phenol formaldehyde or other suitable bonding materials, or the unfaced and faced pre-cut fibrous insulation blankets of the present invention may be binderless provided the blankets possess the required integrity.

but does not disclose the above-noted step of passing the two side-by-side strips through a curing oven as stated in appellants' claim 17. Notwithstanding the final action mention of "col. 16, line 14-col. 18, line 25 and Figs. 16-18", Weinstein does not disclose the above-noted step. In Weinstein (see column 16, line 59 to column 17, line 8) there is disclosure of heating a bonding agent between a facing sheet and the fiber blanket, but this is not a disclosure of "passing the two side-by-side strips through a curing oven... to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the series of intermittent gaps...." as recited in appellants' claim 17.

Claim 20

The final office action states, with respect to claim 20, that “Weinstein teaches a method for producing a frangible fiberglass insulation batt comprising the step of passing a fiberglass insulation blanket through an interval fluid cutter to form intermittent gaps and passing the two side-by-side strips through a curing oven to form (sic) a frangible bridge spanning each of the series of intermittent gaps. See col. 16, line 14-col. 18, line 25 and Figs. 16-18.”

Appellants’ claim 20 requires “moving the fiberglass insulation blanket through a curing oven after the applying act... to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the first series of intermittent gaps.”

Weinstein does not disclose the above-quoted claim 20 step. As noted above with respect to claim 17, Weinstein at column 5, lines 29-37 teaches bonding pre-cut insulation but does not disclose the above-quoted step as stated in appellants’ claim 20. Weinstein’s disclosure of heating a bonding agent between a facing sheet and the fiber blanket is not a disclosure of “moving the fiberglass insulation blanket through a curing oven after the applying act... to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the first series of intermittent gaps....” as recited in appellants’ claim 20.

Conclusion of Argument

From the above, it is readily apparent that 1-2 are definite, that Weinstein et al. does not teach or suggest the subject matter of claims 1, 17 and 20 and the final rejection is in error.

The final rejection provides conclusions without proper reasons explaining the conclusions. Rather, the final rejection action just summarily rejects the claims without adequate explanation. For the foregoing reasons, the appellants, respectfully, request that the rejections of claims 1-2, 17 and 20 be reversed and the application be allowed.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (20121-72260).

Respectfully submitted,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read "Richard B. Lazarus". The signature is fluid and cursive, with the first name "Richard" and last name "Lazarus" clearly distinguishable.

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Appendix A

Claims on Appeal

1. A method of producing a frangible fiberglass insulation batt, the method comprising the acts of

passing a fiberglass insulation blanket through an interval cutter to cut the fiberglass insulation blanket along a cut line to form two side-by-side strips separated by a series of intermittent gaps to form a frangible plane extending along the cut line, wherein the act of passing comprises the acts of discharging a flow of high-pressure fluid to intercept and penetrate the fiberglass insulation blanket along the cut line to form a gap in the fiberglass insulation blanket as the fiberglass insulation blanket is passed through the interval cutter and interrupting the flow of high-pressure fluid intermittently as the fiberglass insulation blanket is passed through the interval cutter to divert the flow of high-pressure fluid from intercepting and penetrating the fiberglass insulation blank intermittently to establish the series of intermittent gaps in the fiberglass insulation blanket and cause the diverted flow of high-pressure fluid to pass into a fluid-reservoir tray located above the insulation blanket to block the flow of high-pressure fluid.

2. The method of claim 1, wherein the act of passing includes the act of moving the fiberglass insulation blanket in a conveyance direction relative to the interval cutter and the act of interrupting includes the acts of moving a fluid blocker comprising a plate located above the fluid-reservoir tray and formed to include a first fluid-discharge slot associated with a first gap formed in the insulation fiberglass blanket and a second fluid-discharge slot associated with a second gap formed in the fiberglass insulation blanket relative to the fiberglass insulation blanket to intercept the flow of high-pressure fluid discharged toward the fiberglass insulation blanket to block the flow of high-pressure fluid from intercepting the fiberglass insulation blanket.

17. A method of producing a frangible fiberglass insulation batt, the method comprising the acts of

passing a fiberglass insulation blanket through an interval cutter to cut the fiberglass insulation blanket along a cut line to form two side-by-side strips separated by a series of intermittent gaps to form a frangible plane extending along the cut line, wherein the act of passing comprises the acts of discharging a flow of high-pressure fluid to intercept and penetrate the fiberglass insulation blanket along the cut line to form a gap in the fiberglass insulation blanket as the fiberglass insulation blanket is passed through the interval cutter and interrupting the flow of high-pressure fluid intermittently as the fiberglass insulation blanket is passed through the interval cutter to divert the flow of high-pressure fluid from intercepting and penetrating the fiberglass insulation blank intermittently to establish the series of intermittent gaps in the fiberglass insulation blanket, and further comprising the act of then passing the two side-by-side strips through a curing oven to expose the strips to a predetermined fiberglass curing heat extant in the curing oven to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the series of intermittent gaps in the fiberglass insulation blanket.

20. A method of producing a frangible fiberglass insulation batt, the method comprising the acts of

moving a fiberglass insulation blanket in a conveyance direction and applying a first flow of high-pressure fluid to the moving fiberglass insulation blanket intermittently to establish a first series of intermittent gaps cooperating to define a first frangible plane in the fiberglass insulation blanket, and

moving the fiberglass insulation blanket through a curing oven after the applying act to expose the fiberglass insulation blanket to a predetermined fiberglass curing heat extant in the curing oven to cause binder extant in the fiberglass insulation blanket to polymerize to establish a frangible bridge spanning each of the first series of intermittent gaps.